Remarks

The Examiner's Office action (Notice of Non-Responsive Amendment) mailed December 12, 2007, has been reviewed. In view of the following remarks, Applicant respectfully submits that the application is in condition for allowance.

The Examiner issued a Notice of Non-Responsive Amendment. The Examiner found that newly submitted claims 2-33 are directed to an invention that is independent or distinct from the invention originally claimed. The Examiner found original claim 1 was directed toward trading according to a snapshot view of the market, and newly presented claims 2-33 are presented toward processing messages within a trading system. The Examiner found that Groups I and II are related as subcombinations usable together, and Group II does not require use of a snapshot view in order to complete a trade. The Examiner found that the "snapshot trade manager" of claims 25, 32, and 33 only monitors, deletes, and stores messages and does not utilize a snapshot view of the market, which was the focus of original claim 1.

The Examiner found that invention of claim 1 was constructively elected by original presentation for prosecution on the merits and withdrew claims 2-33 from consideration as being directed to a non-elected invention.

Applicant thanks the Examiner for the Office action. However, under the Examiner's theory, any amendment to the claims would result in the claims being directed to an invention that is independent or distinct and that could be related as subcombinations usable together. Applicant traverses the Examiner's requirement and respectfully requests that the claims be examined.

Original claim 1 was directed to snapshot processing. Newly submitted claims 2-33 also are directed to snapshot processing, just more narrowly directed, and in accordance with the description of snapshot processing disclosed in the application. For example, the Application describes a process of and system for performing trades for a market with a trading exchange according to a snapshot of the market.

See, for example, the Application, paragraphs 56 and 61-65:

"[0061] Figure 3 depicts an example of a **snapshot trading method** of the present trading system. The trading system processes a message from the trading exchange 104. When the trading system completes the processing, the trading system will process a message received approximately when the processing was completed. The trading system may be configured to

process a message received immediately after processing is completed on the prior message, received at the same time processing is completed on the prior message, or received just prior to the completion of the processing of the prior message. In one embodiment, the trading system is configured to process a next message received at or immediately after the prior message processing is completed.

[0062] Accordingly, the trading system may skip messages received while it is processing another message. In one embodiment, if a message is received from the trading exchange 104 while the trading system 106 is processing a prior message, the trading system trips an update flag. In one example of this embodiment, the trading system does not process the order data in the message. In another example, the trading system dumps the message and its contents while tripping the update flag or after the update flag is tripped.

[0063] When the trading system has completed processing the prior message, the trading system determines if the update flag has been tripped. If the update flag has been tripped, the trading system synchronizes the order data for the selected market or markets. In one example of this embodiment, the trading system requests the current order data from the trading exchange 104 if the update flag has been tripped. The trading system processes the response from the trading exchange 104 and determines whether another order is to be placed with the trading exchange 104 or if another action is to be taken.

[0064] In the embodiment of Figure 3, the trading system 106 receives ten messages from the trading exchange 104, one each second. In this example, two seconds are required by the trading system 106 to process each message. In other examples, other time frames, either greater or lesser, may be required to process a message. Additionally, other units of time measurement may be used.

[0065] In this example, the first message 304 is received and processed 306 at time unit one. The second message is received but not processed. The trading system 106 takes two seconds to process the first message. The trading system processes the next message received after the processing is complete for the first message. In this example, the next message is the third message received at the third second. The trading system takes two seconds to process the third message. Therefore, the trading system receives the fourth message, trips the update flag, but does not process the fourth message. When processing is complete for the third message, the

trading system processes the next received message, which is the fifth message. This process continues until processing is complete." (Emphasis added.)

See also, Application, paragraphs 66-67:

"[0066] In another example, the trading system receives a first change notification in market B and will attempt to adjust the price of the trading system's bid in market A from $9.00 to $10.00 in response to the change in market B's best price from $10.00 to $11.00. If the trading system 106 required one second to post the change in price for the bid in market A, and the changes in market B are occurring at a rate of three per second, then the price in market B at the end of the first cycle is at $13.00. The trading system notes, but does not respond to the change in market B from $11.00 to $12.00 to $13.00. At the end of the trade cycle, the trading system 106 noted that a change had occurred during its trade cycle, and will tend to post a $12.00 bid in market A since the price in market B is currently $13.00. The trading system 106 requires another second to post the $12.00 bid in market A. In this time, the price in market B has changed from $13.00 to $14.00 to $15.00 to $16.00. The trading system 106 finishes its trade cycle and notes that the best price in market B is now at $16.00. The trading system 106 responds by posting another change of $15.00 in the market A bid.

[0067] It will be appreciated that the trading system 106 operates more quickly, in real time, by operating with **snapshot trading** and not operating with serial responses. In this manner, the trading system 106 operates more like a human trader." (Emphasis added.)

See also Application, paragraphs 112-118. Other examples exist and can be identified upon request of the Examiner.

Claim 25 corresponds to an amendment of claim 1. The other independent claims are method claims corresponding to the subject matter of claim 25.

MPEP 821.03 states "[c]laims added by amendment following action by the examiner, MPEP § 818.01, § 818.02(a), to an invention other than previously claimed, should be treated as indicated by 37 CFR 1.145." 37 CFR 1.145 states "[i]f, after an office action on an application, the applicant presents claims directed to an invention distinct from **and** independent of the invention previously claimed, the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in §§ 1.143 and 1.144." (Emphasis added.)

MPEP 802.01 states "[t]he term "independent" (i.e., **>unrelated<) means that there is no disclosed relationship between the two or more inventions claimed, that is, they are unconnected in design, operation, and effect." MPEP 802.01 states "[r]elated inventions are distinct if the inventions as claimed are not connected in at least one of design, operation, or effect (e.g., can be made by, or used in, a materially different process) and wherein at least one invention is PATENTABLE (novel and nonobvious) OVER THE OTHER (though they may each be unpatentable over the prior art)." The newly added claims do not meet the definition of independent since they are related and there is a disclosed relationship between the two or more inventions claimed, that is, they are connected in design, operation, or effect. The newly added claims do not meet the definition of distinct because they cannot be said to meet both criteria where 1) the newly added claims and original claim 1 are not connected in at least one of design, operation, or effect and 2) wherein at least one invention is patentable over the other.

Further, the claims do not meet the criteria of MPEP 806.05(c). For example, the Examiner cannot show that a combination as claimed: (A) does not require the particulars of the subcombination as claimed for patentability (to show novelty and unobviousness), and (B) the subcombination can be shown to have utility either by itself or in another materially different combination. For example, the Examiner has already indicated that claim 1 is not patentable due to novelty or obviousness. Where this is the case, "[t]he inventions are not distinct and a requirement for restriction must not be made or maintained, even if the subcombination has separate utility." MPEP 806.05(c).

Thus, the newly added claims are 1) not distinct from and independent of an invention previously claimed and are 2) not distinct or independent of an invention previously claimed. Therefore, claims 2-33 should not be restricted under 37 CFR 1.145 or MPEP 821.03.

Applicant amended the claims as allowed by MPEP 714(I)(A), consistent with the Detailed Description portion of the Application, consistent with the meaning of the claim terms in the Application (MPEP 608.0(o)), and in accordance with the Examiner's requirements of the prior Office action. (When examining claims for patentability, claims are interpreted as broadly as is reasonable and consistent with the specification. MPEP 2111.01; See *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004); *In re Thrift*, 298 F.3d 1357, 63 USPQ2d 2002, 2006 (Fed. Cir. 2002).) The claims are directed to snapshot processing, just more narrowly directed than claim 1.

Applicant traverses the Examiner's characterization of the newly added claims as being independent or distinct, as being subject to restriction, and as being drawn to a non-elected invention. Applicant traverses the Examiner's characterization of the claims as being subject to a different class/subclass. Finally, Applicant traverses the Examiner's Office action indicating that the newly added claims are not an amended form allowable (i.e. in form for prosecution) under MPEP 714(I)(A).

Reconsideration respectfully is requested.

All reasons for patentability of the independent and dependent claims have not necessarily been discussed herein. The lack of a discussion of additional patentable limitations of the independent and dependent claims should not be construed to mean that there are not additional patentable limitations in those claims. No implication or construction should be made therefore.

Applicant has no further remarks with regard to any references cited by the Examiner and made of record, whether or not acted upon by the Examiner in the action's rejections, even if specifically identified in the action or any other paper or written or verbal communication. No implication or construction should be drawn about any review of the same by Applicant or Applicant's attorney.

Based on the foregoing, it is submitted that the Applicant's invention as defined by the claims is patentable over the references of record. Issuance of a Notice of Allowance is solicited.

Applicant's attorney welcomes the opportunity to discuss the case with the Examiner in the event that there are any questions or comments regarding the response or the application.

This is intended to be a complete response to the Examiner's Office action (Notice of Non-Responsive Amendment) mailed on December 12, 2007.

Respectfully Submitted,

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